REMARKS

This application has been reviewed in light of the Office Action dated May 7, 2003. Claims 13-21 are pending in this application. Claims 16-21 have been added to provide Applicants with a more complete scope of protection. Claims 13 and 14, which are the independent claims, have been amended to define still more clearly what Applicants regard as their invention, in terms that distinguish over the art of record. Claim 15 has been amended to have it depend from Claim 13. Favorable reconsideration is requested.

The Office Action states that "[t]he subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention." Applicants note that formal drawings were submitted with this application on March 4, 2002. A copy of the postcard stamped by the Office evidencing receipt of the drawings is enclosed. For the Examiner's convenience, Applicants enclose herewith a copy of the drawings that were submitted with the application on March 4, 2002.

The Examiner objected to Claim 15, asserting that it depended from cancelled Claim 1. Applicants have amended 15 to have it depend from Claim 13, and therefore request that this objection be withdrawn.

The Office Action rejected Claims 13-15 under the judicially-created doctrine of double patenting in view of Claims 1-25 of U.S. Patent No. 6,380,665 (Motoi et al.), which is the parent to this case. Applicants respectfully traverse this rejection and submit that amended independent Claims 13 and 14 include the feature of a voltage applier, for applying a voltage between the first electrode and the second electrode, to emit electrons, in which the voltage applier applies a potential greater than a potential of the

second electrode to the first electrode in order to emit electrons. Support in the specification for this feature can be found at least from page 33, line 12, to page 34, line 20, and is represented in Figure 3B. With this feature, a higher potential is applied to an electrode connected to a first carbon film having a second end disposed at a greater height relative to a surface of a supporting substrate than a second end of a second carbon film, thereby providing greater electron emission efficiency. Claims 1-25 of Motoi et al. essentially refer to a narrowest gap portion between the first and second carbon films that is located at a position distant (above or higher) from a surface of the substrate, but these claims do not recite or suggest the feature of a voltage applier for applying a voltage between the first electrode and the second electrode, to emit electrons, as recited in amended Claims 13 and 14. Accordingly, Applicants submit that Claims 13 and 14, and their dependent claims, are patentably distinct from Claims 1-25 of Motoi et al.

In addition, the Office Action at page 3 also cited the In re Schneller, 397 F.2d 350, 158 USPQ 210 (CCPA 1968) case as one basis for the double patenting rejection. Applicants submit, however, that it believes that that case applies only where a *single* embodiment is disclosed. In such a case, the later issuance of a second patent, with additional claims directed toward the same embodiment, would unfairly exclude others from making the only disclosed invention for more than the relevant term of the first patent. Applicants submit that it believes that Schneller was overruled, *sub silentio*, by In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). In Vogel, the court restated the law of double patenting, holding that there are two, and only two, types of double patenting

rejections: same-invention double patenting under 35 U.S.C. § 101 and obviousness-type double patenting, neither of which applies to this application.

For all of the foregoing reasons, Applicants respectfully request withdrawal of the double-patenting rejection.

The Office Action rejected Claims 13 and 14 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 6,184,610 (Shibata et al.). Applicants respectfully traverse this rejection.

As discussed above, amended independent Claims 13 and 14 include the feature of a voltage applier, for applying a voltage between the first electrode and the second electrode, to emit electrons, in which the voltage applier applies a potential greater than a potential of the second electrode to the first electrode. Shibata et al., relates to an electron-emitting device, electron source, and image-forming apparatus. Applicants submit that nothing has been found by Applicants in Shibata et al. that would teach or suggest this feature. For this reason, Applicants submit that Claims 13 and 14 are patentable over Shibata et al.

The other claims in this application depend from one or another of the independent claims discussed above, and, therefore, are submitted to be patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, individual consideration or reconsideration, as the case may be, of the patentability of each claim on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

Peter C. Thurlow

Attorney for Applicants

Registration No. 47,138

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200

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